

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

W.P.(S) NO. 4958 /2004

PETITIONER:

Union of India through
Commissioner of Central Excise
and Customs, Raipur, Dhamtari,
Tikrapara Road, Raipur (Chhattisgarh)

VERSUS

RESPONDENTS:

1. Central Administrative Tribunal,
Bench at Jabalpur

Gopal Prasad Joshi, S/o Shri
Banmali Joshi, aged about 36
years, Inspector, Central Excise,
Distt. Raipur.

P.R. No.

Presented by Shri.

dated

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF AN
APPROPRIATE WRIT, DIRECTION OR ORDER.

DETAILS OF PETITION

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

WRIT PETITION NO. 4958 OF 2004

Union of India

Versus

Central Administrative Tribunal & Another

Present: Mr. Vinay Harit, Sr. Standing Counsel for Union of India /
petitioner.

Respondent No.2 – Gopal Prasad Joshi, in person.

ORDER
(Passed on 6th May 2005)

The following Order of the Court was passed by
A.K. Patnaik, CJ: -

In this writ petition under Articles 226 & 227 of the Constitution of India, the Union of India through Commissioner of Central Excise & Customs, Raipur has challenged the order dated 29.07.2004 passed by the Central Administrative Tribunal, Jabalpur in Original Application No.68 of 2002.

2. The facts briefly are that respondent No.2 has been working in the Central Excise Department since 1987. During the period 1996-2001 respondent No.2 was posted as Inspector, Central Excise in the Divisional Technical Branch of Central Excise, Division-I, Bhilai. The Superintendent (Technical) was the supervisory officer in-charge of the Divisional Technical Branch, Bhilai and all files of the Technical Branch was being put up to the Superintendent (Technical) by the respondent No.2. The Superintendent (Technical) was also the reporting officer for ACRs of respondent No.2. All of a sudden, Shri Shrawan Kumar, who was the Divisional Officer, issued an order dated 31.12.1996 directing that the respondent No.2 will work directly under him and will put up all the files

directly to him and not through the Superintendent (Technical). Thereafter, some adverse entries were made in the ACRs of respondent No.2 for the year 1996-97 by the said Shri Shrawan Kumar and the same were communicated to respondent No.2 by the Joint Commissioner, Central Excise by his letter dated 20.09.1999. Respondent No.2 submitted a representation on 13.03.2000 for the expunging the said adverse remarks and the Commissioner, Central Excise, Raipur by his order dated 20.03.2001 expunged only part of the said adverse remarks to the effect that respondent No.2 was very argumentative and did unnecessary things but rest of the adverse remarks to the effect that respondent No.2 was not disciplined and once he instigated the staff and misbehaved with superior officers and he was in-disciplined and that he had poor temperament which had adverse bearing on his work and performance, were not expunged. Aggrieved, respondent No.2 filed Original Application No.68 of 2002 before Central Administrative Tribunal, Jabalpur Bench, Jabalpur and by order dated 29.07.2004, the Central Administrative Tribunal Jabalpur Bench, Jabalpur allowed the said Original Application and expunged the aforesaid adverse remarks in the ACRs of respondent No.2 for the year 1996-97 recorded by Shri Shrawan Kumar. In the said order, the Central Administrative Tribunal also found that the respondent No.2 was denied financial upgradation on account of the adverse remarks in the ACRs of respondent No.2 and the Tribunal accordingly directed the respondents to hold a review departmental screening committee to consider the case of respondent No.2 for grant of first financial upgradation under ACP Scheme, within a period of four months from the date of receipt of the order of the Tribunal and further directed that if the respondent No.2 was found suitable, he should be given the same benefit from the due date with all consequential benefits.

3. We have heard Mr. Vinay Harit, Sr. Standing Counsel for Union of India / petitioner and respondent No.2 in person and we find that the Tribunal has given reasons for the aforesaid order dated 29.07.2004 in para 6 of its order and the said para 6 of the order of the Tribunal is quoted herein below:

"6. After hearing the applicant in person and also the learned counsel for the respondents, we find that the applicant had worked directly under the Superintendent (Tech.) from 1.4.1996 to 31.12.1996. Thereafter vide order

dated 31.12.1996 the applicant was directed to work directly under Shri Shrawan Kumar, Divisional Officer and he will put up all the files directly to him and not through the Supdt. (Tech.). We also find that the applicant worked for less than 90 days with Shri Shrawan Kumar because he was on deputation for training at NACEN, Mumbai during the period from 6.1.1997 to 17.1.1997. The applicant has also made certain allegations against Shri Shrawan Kumar and it is not made clear by the respondents as to why all of a sudden Shri Shrawan Kumar, Divisional Officer has issued the order dated 31.12.1996, directing the applicant to work under him and will put up all the files directly to him and not through the Supdt. (Tech.). It was also the duty of the respondents to inform the applicant about his short-comings to improve himself. But no such information was given to the applicant, rather issued the said ACR. We have further perused the relevant remarks in the ACR which apparently seems to be vague. No date, time or place are mentioned, so as to establish that he instigated the staff and misbehaved with superior officers once. We also find that the respondents did not furnish the basis for such adverse remarks to the applicant when he requested for it."

It will be clear from the aforesaid para 6 of the order that the Tribunal has taken a view that respondent No.2 worked for less than 90 days with Shri Shrawan Kumar because respondent No.2 was on deputation for training at NACEN, Mumabi during the period from 6.1.1997 to 17.1.1997 and that it was not clear as to why all of a sudden Shri Shrawan Kumar, Divisional Officer issued the order dated 31.12.1996 directing that the respondent No.2 will work under him and will put up all the files directly to him and not through the Superintendent (Technical). The Tribunal was also of the view that it was the duty of the authorities to inform a Government Servant about his short-comings to improve himself and only thereafter record adverse remarks in the ACR if he did not improve himself, but this has not been done before the adverse entries were made in the ACRs of respondent No.2. The Tribunal had also perused the relevant remarks in the ACRs of respondent No.2 and had taken a view that the same were vague and no date and time or place were mentioned, so as to establish that the respondent No.2 instigated the staff or misbehaved with the superior officers once. The Tribunal had also found that the authority had not furnished the basis for such adverse remarks to respondent No.2 when the respondent No.2 requested for the same.

4. Mr. Vinay Harit, Sr. Standing counsel for Union of India / petitioner vehemently submitted that the Tribunal or the Court should not normally interfere with the adverse remarks made in the ACRs of a Government Servant. He further submitted that the respondent No.2 had worked under Shri Shrawan Kumar as Shri Shrawan Kumar was the Divisional Officer of the Division in which respondent No.2 was working during the period 1.4.1996 to 31.12.1996 and therefore Shri Shrawan Kumar had full experience of the work done by respondent No.2 and he could therefore, write the ACRs of respondent No.2 under the instructions and circulars issued by the Government of India relating to writing of the ACRs. He cited the judgment of the Supreme Court in **R.L. Butail vs. Union of India & Others** reported in 1970(2) SCC 876 in which it has been held that the reporting authority is not required to give specific instances on the basis of which the adverse entry was made in the confidential report.

5. In view of the aforesaid submissions made by Mr. Vinay Harit, learned counsel for the petitioner, we called upon Mr. Harit to produce before us the ACRs of the respondent No.2 for different years only for the purpose of finding out as to whether the adverse entries made by Shri Shrawan Kumar were consistent with the entries made by other reporting officers and reviewing officers in the ACRs of respondent No.2 in other years and Mr. Harit has produced before us the ACRs of respondent No.2. The adverse entries which were made by Shri Shrawan Kumar in the ACRs of respondent No.2 for the period 1.4.1996 to 31.3.1997 were to the following effect:

"Column No.5

Discipline	: He is not disciplined. He is very argumentative and does unnecessary things. Once he instigated the staff and misbehaved with senior officers. He is indisciplined. POOR
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Column No.7(a)

Other observations, if any	: He has very Poor temperament which has adverse bearing on his work and performance. None of the other factors noticed."
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But we find that in the ACRs for the period 1.4.1995 to 31.3.1996 during which he was posted as Inspector in Central Excise Headquarter, Raipur and Inspector (Review), Office of the Commissioner, Central Excise, Raipur, the reporting officer has indicated against column No.5 relating to discipline that the respondent No.2 was a very submissive and disciplined officer and has graded him as "VERY GOOD" and the reviewing officer, Assistant Commissioner, Central Excise & Customs (Audit), HQ., Commissionerate, Raipur as agreed with the reporting officer and has given the respondent No.2 on over all assessment of performance and qualities as "VERY GOOD". Thus, for the immediately succeeding period 1.4.1996 to 31.3.1997 if any adverse entry was to be made against respondent No.2 that he was not disciplined or that he had instigated the staff or misbehaved with senior officers or that he was indisciplined or that he had very poor temperament which has adverse bearing on his work and performance, such adverse entries should be based on some objective assessment of the general character or behaviour of the respondent No.2 in the discharge of his duties and should not be influenced by subjective considerations of the Reporting or the Reviewing Officer. The decision of the Supreme Court in *R.L. Butail vs. Union of India & Others* (supra) does not apply to the facts of this case and this is not a fit case in which we should in exercise of our extra ordinary or supervisory jurisdiction interfere with the impugned order of the Central Administrative Tribunal under Article 226/227 of the Constitution.

6. For the aforesaid reasons, the writ petition is dismissed. However, considering the facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge